

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS

TRIAL COURT OF THE  
COMMONWEALTH  
SUPERIOR COURT DEPARTMENT

\_\_\_\_\_  
VERIZON NEW ENGLAND, d/b/a )  
VERIZON MASSACHUSETTS, )  
Plaintiff, )  
 )  
v. )  
 )  
FIBERTECH NETWORKS, LLC, f/k/a )  
FIBER SYSTEMS, LLC, )  
Defendant. )  
\_\_\_\_\_ )

Civil Action No. 02-831

\_\_\_\_\_  
WESTERN MASSACHUSETTS )  
ELECTRIC CO., )  
Plaintiff, )  
 )  
v. )  
 )  
FIBERTECH NETWORKS, LLC, f/k/a )  
FIBER SYSTEMS, LLC, )  
Defendant. )  
\_\_\_\_\_ )

*consolidated with*

Civil Action No. 02-843

\_\_\_\_\_  
MASSACHUSETTS ELECTRIC CO., )  
 )  
Plaintiff, )  
v. )  
 )  
FIBERTECH NETWORKS, LLC, f/k/a )  
FIBER SYSTEMS, LLC, )  
Defendant. )  
\_\_\_\_\_ )

*and*

Civil Action No. 02-983

## OPPOSITION TO SELP's MOTION FOR EXTENSION OF TIME TO FILE COMMENTS

Ordinarily Fiber Technologies Networks LLC ("Fibertech") would not oppose a reasonable request to extend time as an accommodation to counsel. The motion of Shrewsbury's Electric Light Department ("SELP") to extend time to file comments in response to the Department's December 15, 2003 notice (the "Notice"), however, appears mainly calculated to delay proceedings. Fibertech therefore opposes this motion.

SELP asserts that "[g]iven the length of time that has elapsed with no action taken on this matter, no party will be prejudiced by a delay posed by this request for an extension." Fibertech already has been prejudiced by the time it has taken to resolve this dispute. Fibertech first requested attachments from SELP more than three years ago, on June 27, 2000. It filed its complaint more than two years ago, on August 27, 2001. A year has passed since the Department's ruling on motions for summary decision. Still Fibertech still has no pole attachments in Shrewsbury, the Town has not acted on grants of location, and the Department is long past the 180 days in which "final action" on Fibertech's petition is required by 47 U.S.C. § 224 (3)(B)(i) and 220 C.M.R. 45.08.

SELP fails to offer concrete, particular reasons why this process should be extended still further. It simply points to unspecified ongoing cases as well as the intervening holidays. Pointing to "ongoing court cases" does not differentiate the ordinary press of business that all counsel are subject to, and it is unlikely that the Department overlooked the approach of the holidays when it issued its Notice on December 15. Counsel for Fibertech likewise must attend to this matter over the holidays and deal with the press of other business. In addition, Fibertech counsel is heavily involved in the upcoming Presidential primaries, and SELP's proposed due date of January 20, 2004 falls the day after the Iowa caucuses, with other primaries and caucuses

coming a rapid succession over succeeding weeks. Had counsel for SELP made a request for an extension before filing its motion, these schedule conflicts could have been aired. Meeting the Department's January 6, 2004 due date may require intense effort of the part of all counsel, but further delay is not a reasonable alternative.

SELP's motion devotes greater attention to questioning the wisdom of the Department's Notice and rearguing the pending motion for reconsideration than it does to explaining its concrete need for more time. If SELP can marshal as much comment in a matter of days as to why it thinks Fibertech's wholesale tariff should not affect the Department's decision in this case,<sup>1</sup> evidently it is capable of commenting in full by January 6, 2004. The Department can avail itself of any records and documents in its possession to incorporate into the record of a proceeding and, like Massachusetts courts, may take administrative notice of its records and files. 220 C.M.R. 1.10 (2), (3); *see* P.J. Liacos; M.S. Brodin & M. Avery, Handbook of Massachusetts Evidence § 2.8.1 (7<sup>th</sup> ed.) at 25-26 (courts take judicial notice of their own and other courts' records and files related to proceedings). By its Notice, the Department is simply affording the parties the required opportunity contest such administrative notice and, in addition, to comment on their impact, if any. Since the Department is acting on its own motion, SELP and Fibertech are on equal footing. SELP's complaints about the Notice therefore are without basis.

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<sup>1</sup> Like any other person, SELP is on constructive notice of Fibertech's wholesale tariff and can examine it at the DTE. For the convenience of counsel, Fibertech is serving a copy of this tariff with this filing.

For the foregoing reasons, the Department should adhere to the schedule set in its Notice,  
and deny SELP's motion to extend the time for comment.

Respectfully submitted,

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